

**ARTICLE 8**  
**DISCIPLINE AND AFFIRMATIVE ASSISTANCE**

**PART A. DISCIPLINE MISCONDUCT**

**Section 1. Scope.**

The Employer will utilize disciplinary action only for just cause toward employees who engage in violations of the Code of Conduct. It is the intention of the Employer to utilize discipline by progression, when feasible.

**Section 2. Definitions.**

- a. **Disciplinary Action.** For the purposes of review thereof, disciplinary action shall mean a written warning, written reprimand, suspension without pay, and discharge. For the purposes of this Part, counseling, retraining, conditional service ratings and demotions are not disciplinary action. Nothing in this Part is intended to preclude a supervisor from verbally discussing isolated instances of minor misconduct with an employee in lieu of administering disciplinary action.
- b. **Investigatory Leave.** Upon verbal notification followed within twenty-four (24) hours by written delineation of the reasons, an employee may be placed upon investigatory leave with pay for up to fifteen (15) calendar days as a result of the Employer's reasonable belief that the employee participated in an event of significant consequence to the Department, the employee, or the public. Such investigatory leave with pay shall be for the purpose of investigating the event. At the time the verbal notification is given, an Association representative may be present if available, upon the employee's request. In the event an Association representative is not present, the Association shall forthwith be notified of the investigatory leave. Investigatory leave with pay shall create no negative inferences with reference to the affected employee, shall not be considered discipline, and is not subject to appeal.
- c. **Pay Forfeiture.** For the purposes of this Article, the forfeiture of pay for the period of any unexcused absence shall not constitute discipline; however, any order forfeiting pay shall be subject to the grievance procedures of Article 9.

**Section 3. Application.**

The various disciplinary actions are described as follows:

- a. **Written Warning**. A written warning delineates minor violation(s) of the Code of Conduct not involving a violation of law and advises the employee that official notice has been taken thereof and that further misconduct of a similar nature will subject the employee to further disciplinary action. A copy of all written warnings shall be given to the employee. If the employee believes the warning to be inaccurate or excusable due to mitigating circumstances and the employee does not choose to appeal pursuant to Section 5(a), or is not satisfied with the results of the appeal, the employee may submit a Statement of Response, consistent with the "Bullard-Plawecki Employee Right to Know Act," to his/her supervisor, a copy of which shall be attached to the Employer's copy of the written warning and destroyed at the same time as the written warning.
- b. **Written Reprimand**. A written reprimand includes the personal discussion accompanied by a written notice that delineates violation(s) of the Code of Conduct. Its purpose is to advise the employee that further misconduct may result in additional disciplinary action including discharge. A written reprimand may be accompanied by other compatible disciplinary steps. A copy of the reprimand shall be given to the employee and to the Association. An Association representative shall be present at the employee's request during the investigation, interrogation and/or personal discussion of the written reprimand. If the employee believes the written reprimand to be inaccurate or that there are mitigating circumstances, and the employee does not choose to appeal pursuant to Section 5(a), or is not satisfied with the results of the appeal, the employee may submit a Statement of Response consistent with the "Bullard-Plawecki Employee Right To Know Act," to his/her supervisor, a copy of which shall be attached to the Employer's copy of the written reprimand and destroyed at the same time as the written reprimand.
- c. **Suspension or Discharge After Investigation**. If an investigation establishes just cause for disciplinary action, a suspension without pay not to exceed thirty (30) calendar days or a discharge may be issued after a hearing by the Discipline Appeal Board. A copy of the statement of the charges and a proposed penalty shall be given to the employee and to the Association at least ten (10) calendar days before the hearing. Upon proper notice of the charges and the proposed penalty, the employee may, in writing, accept the discipline, in which event no hearing shall be held and no appeal shall be taken.
- d. **Immediate Suspension Without Pay**. When the Director or Acting Director forms a reasonable belief that an employee has committed a felony, as defined by the Michigan Penal Code, or in the event of a misdemeanor for which a warrant has been issued, he/she may

suspend the employee without pay for such period as is required to reach a final determination through the procedures of this Agreement. If, after a final determination is reached through the procedures of this Agreement, the employee is exonerated or the penalty is reduced to less than the time already served, the employee shall receive all appropriate back pay and other benefits lost during the period of suspension, including full status and seniority. If the employee is issued a disciplinary suspension, the time served on the immediate suspension without pay shall be credited to the employee's disciplinary suspension. In the event criminal charges are brought against the employee, at the employee's written request, the Discipline Appeal Board hearing shall be (1) conducted forthwith; or (2) postponed until after final adjudication of the criminal proceedings.

#### **Section 4. Association Participation.**

Whenever the Employer and the employee mutually request or the employee requests assistance from the Association in helping work with an employee who may have engaged in conduct for which the employee may be, or has been disciplined, the Association shall cooperate in rendering necessary assistance.

#### **Section 5. Grievances, Appeals, Hearings and Arbitration.**

- a. **Written Warning or Written Reprimand.** If an employee believes that any written warning or written reprimand is unfair, unjust or inaccurate, the employee may appeal within fifteen (15) calendar days after notification in writing to their District or Division Commander, who shall promptly schedule a Discipline Panel pursuant to Section 6. The decision of the Discipline Panel shall be final.
- b. **Suspension or Discharge.** Upon receipt of written notice of the reasons for a suspension without pay or discharge, an employee may file a grievance pursuant to Article 9 of this Agreement, commencing at Step 3. Upon receipt of a written Step 3 answer, the Association, on behalf of the employee, may within fourteen (14) calendar days, give written notice of the grievant's desire to convene a Discipline Appeal Board.
- c. Except as provided in Section 3(d) of this Article, no suspension or discharge shall be invoked against any employee who has not accepted the discipline until a determination is reached by the Discipline Appeal Board.
- d. Within fourteen (14) calendar days following the determination of the Discipline Appeal Board, the Association may give the Employer

written notice of the Association's intent to convene a new hearing pursuant to the Step 4 arbitration procedures set forth in Article 9 of this Agreement.

**Section 6. Discipline Panel\*.**

The Discipline Panel shall consist of two command officers designated by the District or Division Commander, the District/Regional Association representative and the employee's Post or Unit representative. If any of the aforementioned members are personally involved in the proposed discipline, that member shall be replaced by a person in an equivalent position at the adjacent District, Post, Unit, or Region. The proceedings shall be conducted with decorum, but shall be informal; however, basic standards of due process and fairness shall apply. If a majority of the Discipline Panel is unable to agree with reference to a written warning or written reprimand appeal, the discipline imposed shall stand. All employees participating as panelists, the affected employee, the employee representative and witnesses in a Discipline Panel proceeding shall serve or appear without loss of time, pay or benefits. **\*See Appendix A for clarification of pay status for Discipline Panel Members.**

**Section 7. Discipline Appeal Board.**

The Discipline Appeal Board shall consist of two (2) enlisted personnel nominated by Management and two (2) enlisted personnel nominated by the Association, and an enlisted Chairperson selected pursuant to Section 8 of this Article.

**Section 8. Selection of Discipline Appeal Board.**

- a. During the month of February of each year, the parties shall submit to each other at the same time a list of eight (8) names for Discipline Appeal Board members. The names submitted must be enlisted State Police personnel who would be willing to serve (and who will act fairly and impartially) as members. Within two (2) weeks after submission of the list of eight (8) names, each party shall strike six (6) names from the other party's list. The remaining four (4) names shall constitute the Board. No member of the Discipline Appeal Board shall have been involved in any previous actions involving the employee in the matter to be heard, and any Board member may excuse himself/herself because of bias, prejudice, or other reasons. In the event a member is unable to participate, the parties will choose a replacement member. If a replacement member is necessary, the party needing the replacement member shall nominate three (3) impartial enlisted persons and the opposite party shall strike two (2) names. The remaining person, if not excused, shall serve as a member of the Board.

- b. Except as provided in Paragraph c below, the Employer shall provide the Association with a list of three (3) enlisted State Police officers prior to each Discipline Appeal Board. Within five (5) calendar days of receipt, the Association shall strike two (2) names and notify the Employer of the remaining person, who shall preside over the hearing as the impartial chairperson.
- c. When proposed discipline alleges that an employee is under the influence of, using, selling, dispensing, or in possession of any controlled substance unlawfully, the Association shall provide the Department with the names of three (3) enlisted State Police Officers prior to the Discipline Appeal Board. Within five (5) calendar days of receipt, the Department shall strike two (2) names and notify the Association of the remaining person, who shall preside over the hearing as the impartial chairperson.

**Section 9. Conduct of Discipline Appeal Board Hearing.**

- a. The hearing shall be conducted with the necessary decorum to expedite and facilitate its purpose. Witnesses shall be sworn; the Employer shall have the burden of going forward; relevant testimony and documentary evidence may be submitted (as determined by the majority vote of the Board), and each party shall be given a fair opportunity to examine and cross-examine witnesses and to present its case. The employee may, but is not required to, give testimony. Within five (5) days after close of hearing, a written decision shall be rendered. A majority vote is sufficient for determination.
- b. The employee may be represented by an Association representative or counsel of the employee's own choice, and the Employer may be represented by a person of its own choosing.
- c. The Discipline Appeal Board's authority shall be limited to the testimony and evidence presented. The Board shall have authority to uphold, reduce or reverse the penalty. Where no proposed penalty has been submitted, the Board shall set the penalty.
- d. The determination(s) of the Discipline Appeal Board shall be based on competent, material, and substantial evidence on the whole record.
- e. The Discipline Appeal Board shall not have the power to review alleged procedural violations, or to interpret the provisions of this Agreement, which are reserved solely for arbitration. The Discipline Appeal Board shall determine only the merits of the case and the appropriate penalty.

- f. All employees who have been selected to serve on the Discipline Appeal Board, all employee representatives and all employee witnesses, regardless of who calls them as witnesses, shall serve or appear without loss of time, pay or benefits, in accordance with Appendix A of this Agreement. Appendix A shall also apply to arbitration hearings involving discipline.
- g. The Discipline Appeal Board shall be convened within thirty (30) calendar days of the receipt of the written appeal, except in cases involving immediate suspensions without pay or upon mutual agreement of the Employer and the Association. In cases involving immediate suspensions without pay, the Discipline Appeal Board shall be convened within twenty (20) calendar days of receipt of the written appeal, except upon mutual agreement of the Employer and the Association.
- h. The decision made by the Discipline Appeal Board shall be implemented as soon as administratively possible.

#### **Section 10. Arbitral Review.**

- a. Only the Association has the right to request that a discipline case proceed to arbitration under the provisions of Section 5 d. of this Article. The parties shall not disclose the results of the Discipline Appeal Board to the arbitrator, who shall conduct the hearing on the original or reduced Statement of Charges and proposed penalty.
- b. When the chairperson of the Discipline Appeal Board is an Association designee, under the provisions of Section 8, Paragraph c. of this Article, there shall be no appeal to arbitration based on the merits of the case or the appropriateness of the penalty. If procedural issues that are subject to review by an arbitrator are raised, the arbitral review shall be completed before the Discipline Appeal Board reviews the merits of the case.
- c. If the arbitrator reduces the suspension to less than the time already served, the employee shall receive all appropriate back pay and other benefits lost during the period of suspension, including full status and seniority.
- d. If the arbitrator reinstates an employee after discharge, the employee shall receive back pay and other benefits lost during the period of discharge, including status and seniority, consistent with the arbitration award.

- e. If an arbitrator orders a suspension greater than the penalty served as a result of the finding of the Discipline Appeal Board or discharge, the Employer may implement the arbitrator's decision. In the aforementioned circumstance, the time previously served shall be credited.

#### **Section 11. Time Limits.**

All time limits throughout this Article must be complied with except that upon mutual agreement or good cause shown in writing, they may be extended. However, such extension cannot be more than twice the original time limit.

#### **Section 12. Removal of Pass Days.**

An employee may, upon agreement with the Employer, elect to work without pay on pass days in place of suspension without pay for acts of misconduct, up to a maximum of one pass day per 28 day work period. Notification of such action shall not require the presence of an Association representative; however, the employee shall have the right to consult with an Association representative prior to making his/her election. Where agreement is reached prior to hearing, no hearing shall be held.

#### **Section 13. Removal of Personnel From Discipline Process.**

In the event that any representative of the Employer or the Association, including Discipline Panel or Discipline Appeal Board members, acts arbitrarily or capriciously to interfere with just, fair and impartial administration of discipline, a party to this Agreement who feels aggrieved by such conduct may utilize the grievance procedure to seek redress by filing an Employer or Association grievance, and may request the removal of said person from future discipline procedure participation, or other appropriate relief. In the event a representative, Panel member, or Board member is removed from future discipline procedure participation, a replacement shall be made in accordance with Section 8a.

#### **Section 14. Time Limits for Retention of Written Warnings/Written Reprimands.**

All written warnings shall be destroyed within one (1) year and written reprimands within two (2) years of the date of issuance unless the employee receives further disciplinary action for misconduct of a similar nature. A written warning or written reprimand may be destroyed earlier if the supervisor believes the employee's improvement warrants earlier destruction of the written warning or written reprimand.

After the time limit for retaining the written warning has expired, no reference to the written warning shall be made for purposes of unrelated discipline or selection process affecting the employee.

References to any investigatory suspension that does not lead to disciplinary action shall not be made a part of the employee's personnel file.

#### **Section 15. Limitation of Arbitral Review.**

No arbitrator shall have the authority to review or remove any written warning or written reprimand.

### **PART B. AFFIRMATIVE ASSISTANCE - COUNSELING, RETRAINING, CONDITIONAL SERVICE RATINGS AND DEMOTION**

#### **Section 1. Scope.**

The Employer will utilize affirmative assistance to assist employees who are having difficulties performing their jobs satisfactorily and/or not responsibly fulfilling their employment obligations. Affirmative assistance is not to be considered as discipline.

#### **Section 2. Definition.**

Affirmative assistance means counseling (verbal and/or written), retraining, conditional service rating and demotion.

#### **Section 3. Corrective Measures.**

In unsatisfactory job performance as opposed to misconduct, the Employer shall utilize affirmative assistance measures. Such measures may include counseling (verbal and/or written), retraining, conditional service rating and demotion. If measures do not succeed, then the employee may be demoted or dismissed for cause. It is understood that each and every item of affirmative assistance need not be utilized when working with unsatisfactory performance. The circumstances of each case will determine the measures to be utilized. However, counseling or retraining must precede by fifteen (15) calendar days a conditional service rating, and a conditional service rating must precede termination or demotion.

#### **Section 4. Application.**

The various affirmative assistance measures will be utilized progressively in the following order:



- a. **Counseling**. Verbal counseling includes the discussion of perceived improprieties in an employee's conduct or work. It also involves the explanation of Departmental expectations and analysis of the employee's work and/or conduct record in comparison therewith. No record of verbal counseling shall be placed in an employee personnel file. This, however, does not preclude a supervisor from referring to verbal counseling in the event a written counseling memo is issued. Written counseling means the discussion and/or explanation is reduced to writing with a copy submitted to the employee. Written counseling memos shall be removed from the employee's personnel file after six (6) months unless, within that period, a retraining order, conditional service rating or demotion is issued.
- b. **Retraining**. Retraining includes written counseling, and any or all of the following:
  - (1) The establishment of specific, written job performance criteria for the employee;
  - (2) The establishment of reasonable time limits to meet said criteria;
  - (3) The appointment of a fellow employee to assist the employee in meeting job performance criteria and monitoring his/her job performance;
  - (4) The requirement of attendance at any special schools or participation in any special programs designed to improve job knowledge, understanding and performance;
  - (5) Any other reasonable terms, conditions and criteria.
- c. **Conditional Service Rating (Written)**. This rating includes the personal discussion accompanied by a written summary, outlining unsatisfactory job performance by the employee, specifying improvement requirements, and setting a time limit of not less than thirty (30) days nor more than one-hundred-eighty (180) calendar days by which time specified improvement must be made and job performance must be satisfactory. A copy of the rating shall be given to the employee and notice of it shall be given to the Association.
- d. **Demotion**. If after receipt of a conditional service rating, the employee has failed to meet established job performance criteria, the employee may be demoted to a lower classification in which the employee previously exhibited satisfactory job performance.

- e. **Termination of Employment.** If after receipt of a conditional service rating the employee has failed to meet specified improvement requirements within the time limits established, or fails to meet established job performance criteria, the employee's service with the Employer may be terminated.

## **Section 5. Association Participation.**

The employee may also utilize the assistance of the Association representative in any appeal, grievance proceeding required by Article 9 of this Agreement, or when the employee is given a written counseling, retraining order, conditional service rating or notice of demotion.

## **Section 6. Appeals.**

- a. **Counseling (Verbal/Written).** No appeal. However, if the employee believes the written counseling is either inaccurate, unwarranted or that there are mitigating circumstances, the employee shall, within ten (10) calendar days, submit a Statement of Response to his/her supervisor, a copy of which shall be attached to the Employer's copy of the written counseling.
- b. **Retraining.** If the employee believes that the retraining order is either inaccurate, unwarranted or that there are mitigating circumstances, or if he/she believes the retraining criteria are arbitrary, capricious or unreasonable, he/she may, within ten (10) calendar days, appeal in writing to the next level of supervision above the level that imposed the retraining. The party to whom the appeal is directed may confer with the employee and the supervisor imposing the retraining and may set aside, modify or affirm the retraining order. The appeal shall be determined within ten (10) calendar days. No further appeal shall be permitted.
- c. **Conditional Service Rating.** If the employee believes the rating to be inaccurate, unwarranted, unfair, arbitrary or capricious, or fails to consider mitigating circumstances, or that the time limits for compliance are unreasonable, the employee shall, within ten (10) calendar days of issuance of the rating, (1) submit a Statement of Dissent, answering and specifying each item in the rating that the employee disagrees with; and (2) appeal in writing to the next level of supervision above the level imposing the Conditional Service Rating. The party to whom the appeal is directed shall confer with the employee and the supervisor imposing the Conditional Service Rating, and may set aside, modify or affirm the Rating within ten (10) calendar days. If dissatisfied with the action of the person to whom the appeal is taken, the employee may, within ten (10) calendar days, appeal to

the Director. The Director or his designee shall respond within ten (10) calendar days. No further appeal shall be permitted; however, the propriety of the Conditional Service Rating may be an issue at any subsequent hearing if the employee is discharged or demoted.

- d. **Demotion or Termination of Employment.** Employees who have been demoted or terminated by reason of unsatisfactory performance may appeal by timely utilization of the grievance procedure commencing at Step 3 and by thereafter invoking arbitration in a timely fashion.

#### **Section 7. Limitation on Arbitral Review.**

No arbitrator shall have the authority to review or remove any counseling (verbal or written), retraining or conditional service rating. An arbitrator shall only consider prior counseling, retraining or conditional service ratings in an appeal of a demotion or termination.